

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY SCOTT BERRINGER,

Petitioner,

No. CIV S-03-0922 MCE GGH P

vs.

M. YARBOROUGH, Warden,

Respondent.

ORDER

Petitioner is a state prisoner proceeding with appointed counsel with a habeas petition pursuant to 28 U.S.C. § 2254. A stay in this matter was imposed by an Order, filed on 12/23/03, (docket # 18), “pending exhaustion of new and unexhausted claims.” By Order, filed on 9/21/09 (docket # 23), the court directed petitioner’s counsel to show cause why the stay should not be lifted, noting that the stay had been imposed for nearly six years. In response, petitioner’s counsel asked that the stay be lifted and sought to be allowed to file a “fully exhausted petition.” See, Response, filed on 10/01/09 (docket # 24). The court lifted the stay and granted petitioner 14 days to file a fully exhausted second amended petition. See, Order, filed on 10/14/09 (docket # 25).

Petitioner has now moved for voluntary dismissal of this petition on the ground that “he can identify no fully exhausted claim that merits habeas relief in this action.” Motion to

1 Dismiss, filed on 10/28/09 (docket # 28). On 10/29/09 (docket # 29), respondent filed a
2 statement of non-opposition to petitioner's motion. Pursuant to Fed. R. Civ. P. 41(a), the action
3 is dismissed; see also Rule 11, Rules Governing Habeas Corpus Cases Under Section 2254.

4 Accordingly, IT IS HEREBY ORDERED the Clerk of Court shall close this case.

5 DATED: November 9, 2009

/s/ Gregory G. Hollows

6 UNITED STATES MAGISTRATE JUDGE

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